

**QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS  
WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE**

**RECEIVED**

DEPARTMENT/AGENCY Arkansas Department of Health  
DIVISION Health Systems Licensing and Regulation  
DIVISION DIRECTOR Renee Mallory  
CONTACT PERSON Robert Brech  
ADDRESS 4815 West Markham Street  
Little Rock, Arkansas 72205  
PHONE NO. 661-2297 FAX NO. 682-2357 E-MAIL robert.brech@arkansas.gov  
NAME OF PRESENTER AT COMMITTEE MEETING Renee Mallory  
PRESENTER E-MAIL renee.mallory@arkansas.gov

FEB 07 2012  
BUREAU OF  
LEGISLATIVE RESEARCH

**INSTRUCTIONS**

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Donna K. Davis  
Administrative Rules Review Section  
Arkansas Legislative Council  
Bureau of Legislative Research  
Room 315, State Capitol  
Little Rock, AR 72201

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1. What is the short title of this rule? Proposed Revisions to the Arkansas Rules and Regulations for Control of Sources of Ionizing Radiation
2. What is the subject of the proposed rule? Revisions to existing regulations to establish radioactive material licensing fees at 15% of the U.S. Nuclear Regulatory Commission's annual rate and to state current x-ray registration fees in accordance with Statute
3. Is this rule required to comply with a federal statute, rule, or regulation? Yes  No   
If yes, please provide the federal rule, regulation, and/or statute citation.  
-N/A-
4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes  No   
If yes, what is the effective date of the emergency rule? -N/A-  
When does the emergency rule expire? -N/A-

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes  No

5. Is this a new rule? Yes  No

If yes, please provide a brief summary explaining the regulation.

-N/A-

Does this repeal an existing rule? Yes  No

If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

-N/A-

Is this an amendment to an existing rule? Yes  No

If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule?

If codified, please give Arkansas Code citation.

Act 596 of the 88<sup>th</sup> General Assembly gave the Arkansas Board of Health authorization to establish radioactive material license fees. Ark. Code Ann. §20-21-201 et seq. is the authority for licensing and fees.

7. What is the purpose of this proposed rule? Why is it necessary?

The Revisions will establish radioactive material license fees at 15% of the U.S. Nuclear Regulatory Commission's comparable annual fees. The Revisions will document the current x-ray registration fees in accordance with Statute.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b).

www.healthy.arkansas.gov "Rules and Regs" link; www.sos.arkansas.gov "Administrative Rules" link

9. Will a public hearing be held on this proposed rule? Yes  No

If yes, please complete the following:

Date: March 8, 2012

Time: 10:00 a.m.

Central Office Auditorium  
Arkansas Department of Health  
4815 West Markham Street

Place: Little Rock, Arkansas

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

March 8, 2012

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

July 1, 2012

12. Do you expect this rule to be controversial? Yes  No

If yes, please explain. Some radioactive material licensees may oppose the increase in their current

license fees although ADH has worked with the Arkansas Hospital Association, the Arkansas Medical Society and the Department of Higher Education and none are opposed to these revisions.

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13. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.

Private Practice Nuclear Medicine Licensees == Against

Industrial Gauge Licensees == Against

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**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT** Health  
**DIVISION** Health Systems Licensing and regulation  
**PERSON COMPLETING THIS STATEMENT** Bernard (Bernie) Bevill  
**TELEPHONE NO.** 661-2301 **FAX NO.** 661-2236 **EMAIL:** bernard.bevill@arkansas.gov

To comply with Act 1104 of 1995, please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

**SHORT TITLE OF THIS RULE** Proposed Revisions to the Arkansas Rules and Regulations for Control of Sources of Ionizing Radiation

1. Does this proposed, amended, or repealed rule have a financial impact? Yes  No   
2. Does this proposed, amended, or repealed rule affect small businesses? Yes  No   
If yes, please attach a copy of the economic impact statement required to be filed with the Arkansas Economic Development Commission under Arkansas Code § 25-15-301 et seq.

**SEE ATTACHMENT**

3. If you believe that the development of a financial impact statement is so speculative as to be cost prohibited, please explain.

No administrative cost to agency. Unknown how individual licensees will be affected.

4. If the purpose of this rule is to implement a federal rule or regulation, please give the incremental cost for implementing the rule. Please indicate if the cost provided is the cost of the program.

**Current Fiscal Year**

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**Next Fiscal Year**

General Revenue	_____	FEB 07 2012	General Revenue	_____
Federal Funds	_____	BUREAU OF	Federal Funds	_____
Cash Funds	_____	LEGISLATIVE RESEARCH	Cash Funds	_____
Special Revenue	_____		Special Revenue	_____
Other (Identify)	_____		Other (Identify)	_____
Total	<u>-N/A-</u>		Total	<u>-N/A-</u>

5. What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule? Identify the party subject to the proposed rule and explain how they are affected.

**Current Fiscal Year**

**Next Fiscal Year**

\$ 0 \$ \$200,000

Parties subject to additional fees are 228 Radioactive Material licensees.

6. What is the total estimated cost by fiscal year to the agency to implement this rule? Is this the cost of the program or grant? Please explain.

**Current Fiscal Year**

**Next Fiscal Year**

\$ 0 \$ 0

**ECONOMIC IMPACT STATEMENT  
OF PROPOSED RULES OR REGULATIONS  
EO 05-04: Regulatory Flexibility**

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**Department:** 'Health'  
**Contact Person:** 'Bernard (Bernie) Beville'  
**Contact Phone:** 501-661-2301

**Division:** Center for Health Protection  
**Date:** February 2, 2012  
**Contact Email:** [bernard.beville@arkansas.gov](mailto:bernard.beville@arkansas.gov)

FEB 07 2012

**Title or Subject:** Proposed Revisions to the Arkansas Rules and Regulations for Control of Sources of Ionizing Radiation

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**Benefits of the Proposed Rule or Regulation**

1. Explain the need for the proposed change(s). Did any complaints motivate you to pursue regulatory action? If so, please explain the nature of such complaints.  
*Act 596 of the 88th General Assembly gave the Arkansas Board of Health authorization to establish radioactive material license fees not to exceed 25% of the U.S. Nuclear Regulatory Commission's(NRC) comparable annual fees. The Department's PROPOSED fees are 15% of the NRC annual fees. These regulations are NOT the result of complaints.*
2. What are the top three benefits of the proposed rule or regulation?
  1. Increased Department fees will provide the Radioactive Materials Licensing program financial stability through at least FY18.
  2. Arkansas Radioactive Material Licensees will pay substantially less annual licensing fees in comparison to those required to be paid if inspections were conducted by the NRC and fees will stay within the State of Arkansas as opposed to being paid to the federal government.
  3. Arkansas Radioactive Material Licensees will continue to be able to work with local radiation regulators who are responsive to their needs.
3. What, in your estimation, would be the consequence of taking no action, thereby maintaining the status quo?  
*Without the increase of the Arkansas Radioactive Material licensee fees, the State will be faced with the possibility of no longer being able to meet requirements for being an Agreement State with NRC. If this occurred the NRC would begin to regulate the use and possession of radioactive material in the State of Arkansas at a substantially higher cost to the Arkansas licensees.*
4. Describe market-based alternatives or voluntary standards that were considered in place of the proposed regulation and state the reason(s) for not selecting those alternatives.  
-N/A-

**Impact of Proposed Rule or Regulation**

5. Estimate the cost to state government of *collecting information, completing paperwork, filing, recordkeeping, auditing and inspecting* associated with this new rule or regulation.  
*No additional administrative cost to state government.*
6. What types of small businesses will be required to comply with the proposed rule or regulation? Please estimate the number of small businesses affected.  
*Small nuclear cardiology medical practices, small engineering testing firms using portable nuclear gauges, small industrial plants using permanent nuclear gauges and small industrial radiography companies using large radioactives sources. The Department of Health estimates that approximately 60 of its 228 radioactive material licensees may be affected as small business entities but has no way of knowing a true number.*
7. Does the proposed regulation create barriers to entry? If so, please describe those barriers and why those barriers are necessary.  
NO
8. Explain the additional requirements with which small business owners will have to comply and estimate the costs associated with compliance.  
*There are no additional requirements for small business owner to comply with in these proposed revisions other than an increased licensing fee..*
9. State whether the proposed regulation contains different requirements for different sized entities, and explain why this is, or is not, necessary.  
*Radioactive material license fees are based upon the category of use of licensed material and are not based on the business size.*
10. Describe your understanding of the ability of small business owners to implement changes required by the proposed regulation.  
*Most small businesses will pay the increased fees as part of doing business. Some will evaluate the need to use radioactive material and may determine that radioactive devices are not required in their business model and will dispose of the radioactive material resulting in the termination of their license while continuing their business without radioactive material.*
11. How does this rule or regulation compare to similar rules and regulations in other states or the federal government?  
*The proposed Arkansas Radioactive Material fees will be 15% of the U.S. Nuclear Regulatory Commission's (NRC) comparable annual fees*

12. Provide a summary of the input your agency has received from small business or small business advocates about the proposed rule or regulation.

*The Department has discussed the proposed fee increase with the Arkansas Medical Society, the Arkansas Hospital Association and the Arkansas Department of Higher Education. None of these organizations are opposed.*





ARKANSAS DEPARTMENT OF HEALTH  
RADIATION CONTROL'S  
PROPOSED REGULATION  
SUMMARY

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**RH – 58 of the attached proposed revisions to *Rules and Regulations for Control of Sources of Ionizing Radiation***

Places language in the regulations for fee X-ray registrants' certification. The language does not change the current fee.

**RH-103 of the attached proposed revisions to *Rules and Regulations for Control of Sources of Ionizing Radiation***

Places language in the regulations for radioactive material license fees and reflects increases in these fees for radioactive material licensees.

**Explanation**

The Department regulates and licenses the possession and use of radioactive material in the State. The regulatory oversight of radioactive material is performed as an Agreement State with the U.S. Nuclear Regulatory Commission (NRC). Under this agreement the NRC accepts State licensing in lieu of federal oversight which would include charging substantially more for fees and conducting inspections. Licensing fees are used to cover the majority of the cost of the program. Currently fees generated are at 1/6<sup>th</sup> of what it costs to operate the Program. Act 596 of 2011 authorized the Arkansas State Board of Health to establish radioactive material license fees not to exceed 25% of the NRC's comparable fees. Revised language proposes radioactive material fees at 15% of the NRC's fees which results in an additional \$297,555 to current licensees. If the State were no longer able to maintain its agreement with the NRC and the NRC provided oversight, the total cost for current licensed providers would be \$1.98 million. These proposed revisions have been discussed with the Arkansas Medical Society, Arkansas Hospital Association and the Department of Higher Education and none are opposed to the revision.

**RULES AND REGULATIONS  
FOR CONTROL OF SOURCES OF IONIZING RADIATION  
FEE CHANGES  
DRAFT 01-10-12**

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RH-58. Registration Fees.

In accordance with ~~Act 796 of 1995 Codified as the~~ Arkansas Code of 1987 Annotated, §20-21-217, annual fees for registration shall be paid. Nonpayment of fees shall result in escalated enforcement action and/or revocation of registration.

In accordance with the Arkansas Code Annotated §20-21-217, X-ray Registration Fees are as follows:

- a. All X-ray units, \$65.00 per tube up to a maximum of \$260.00
- b. Vendor services providing radiation equipment services or radiation safety services, or both, \$65.00

RH-103. License Fees.

In accordance with ~~Act 796 of 1995~~ Act 596 of 2011 - Codified in the Arkansas Code Annotated §20-21-217, annual fees for licensing shall be paid. Nonpayment of fees shall result in escalated enforcement action and/or revocation of license.

The following Radioactive Material Fees are based upon 15% of the U. S. Nuclear Regulatory Commission's Federal Fiscal Year 2012 annual fees found in 10 CFR 171.16.

The Radioactive Material Fees are as follows:

<u>CATEGORY</u>	<u>CODE</u>	<u>FEE</u>
<u>A. Academic R&amp;D</u>	<u>03620</u>	<u>\$1,215.00</u>
<u>B. Academic Broad Scope</u>	<u>01120</u>	<u>\$2,115.00</u>
<u>C. Accelerator Produced Radionuclides</u>	<u>03210</u>	<u>\$2,280.00</u>
<u>D. Blood Irradiators</u>	<u>03510</u>	<u>\$1,305.00</u>

**RULES AND REGULATIONS  
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DRAFT 01-10-12**

RH-103. (Cont'd)

The Radioactive Material Fees are as follows:

<u>CATEGORY</u>	<u>CODE</u>	<u>FEE</u>
<u>E. Consultant Services</u>	<u>03225</u>	<u>\$2,145.00</u>
<u>F. Eye Applicator (Sr-90)</u>	<u>02210</u>	<u>\$1,260.00</u>
<u>G. Gamma Knife</u>	<u>02310</u>	<u>\$2,625.00</u>
<u>H. Gas Chromatographs</u>	<u>03123</u>	<u>\$720.00</u>
<u>I. High Dose Rate Remote Afterloader</u>	<u>02230</u>	<u>\$1,260.00</u>
<u>J. In-vitro Testing</u>	<u>02410</u>	<u>\$720.00</u>
<u>K. Industrial Radiography</u>	<u>03310</u>	<u>\$3,855.00</u>
<u>L. Instrument Calibration</u>	<u>03221;03222</u>	<u>\$720.00</u>
<u>M. Irradiators – Activity ≥ 10,000 Curies</u>	<u>03521</u>	<u>\$20,625.00</u>
<u>N. Irradiators – Activity &lt; 10,000 Curies</u>	<u>03511</u>	<u>\$2,280.00</u>
<u>O. Manufacturing &amp; Distributing</u>	<u>03214</u>	<u>\$1,770.00</u>
<u>P. Measuring Systems -- Analytical Devices</u>	<u>03122</u>	<u>\$720.00</u>
<u>Q. Measuring Systems -- Fixed Gauge</u>	<u>03120</u>	<u>\$720.00</u>
<u>R. Measuring Systems -- Portable Gauge</u>	<u>03121</u>	<u>\$720.00</u>
<u>S. Medical Broad Scope</u>	<u>02110</u>	<u>\$6,810.00</u>
<u>T. Medical Facility No Written Directive Required</u>	<u>02121</u>	<u>\$1,260.00</u>
<u>U. Medical Facility Written Directive Required</u>	<u>02120</u>	<u>\$1,260.00</u>
<u>V. Medical Private Practice</u>	<u>02200; 02201</u>	<u>\$1,260.00</u>
<u>W. Medical Therapy</u>	<u>02240</u>	<u>\$1,260.00</u>
<u>X. Mobile Medical Services</u>	<u>02231</u>	<u>\$1,260.00</u>
<u>Y. Nuclear Pharmacy</u>	<u>02500</u>	<u>\$2,430.00</u>
<u>Z. Well Logging Including Tracers</u>	<u>03110; 03111; 03112</u>	<u>\$1,500.00</u>
<u>AA. Veterinary</u>	<u>02400</u>	<u>\$720.00</u>
<u>BB. Other Radioactive Material (non-NORM) Decommissioning</u>		<u>\$5,000.00</u>

**RULES AND REGULATIONS  
FOR CONTROL OF SOURCES OF IONIZING RADIATION  
FEE CHANGES  
DRAFT 01-10-12**

RH-103. (Cont'd)

The Accelerator Fees are as follows:

- A. Particle accelerator, non-medical \$200.00 per unit
  
- B. Particle accelerator, medical, non-hospital unit  
\$450.00 for first unit. \$300.00 for each additional unit.
  
- C. Medical, therapy, non-hospital unit
  - (i) \$250.00 for first unit.
  - (ii) \$175.00 for each additional unit.
  
- D. Cyclotrons/Accelerators for the Production  
of Radioactive Material \$3,750.00

The General Licensed Device Fees are as follows:

- i. Certain measuring, gauging, and controlling devices \$720.00
- ii. Generally licensed gas chromatographs .....\$720.00
- iii. Static elimination devices .....\$125.00
- iv. Source material devices. .....\$500.00
- v. Devices containing depleted uranium .....\$500.00
- vi. Public safety devices containing radioactive material .....\$25.00
- vii. All other general license registrations other than  
those specified above .....\$300.00

**RULES AND REGULATIONS  
FOR CONTROL OF SOURCES OF IONIZING RADIATION  
FEE CHANGES  
DRAFT 01-10-12**

viii. Portable & Fixed Gauges ..... \$1,125.00

RH-103. (Cont'd)

OTHER FEES:

1. Naturally Occurring Radioactive Material (NORM) License \$2,500.00
2. Naturally Occurring Radioactive Material (NORM) Site - General License \$500.00
3. Arkansas State Board of Health Rules and Regulations for Control of Sources of Ionizing Radiation: 0.00 for first copy  
30.00 for each additional copy
4. Amendment to existing license . . . . . 50.00 per amendment

RECIPROCITY FEES:

1. Naturally Occurring Radioactive Material (NORM) Decommissioning . . . \$2,500.00
2. Other Radioactive Material (non-NORM) Decommissioning \$5,000.00
3. Radiography, Field..... \$3,855.00
4. i. Well logging with Sealed Sources Only. . . . . \$1,500.00  
ii. Well logging Tracer Studies..... \$1,500.00
5. Nuclear gauge. . . . . \$720.00
6. Consultant. . . . . \$2,145.00
7. Gas Chromatograph/Lead Painter Analyzers. . . . . \$720.00

